

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, CLEVELAND

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	CASE NO. 1:19-cv-02257
)	JUDGE J. PHILIP CALABRESE
Plaintiff,)	
)	
v.)	
)	
DAVIS AUTOMOTIVE GROUP, INC.)	
t/a BMW CLEVELAND,)	
Defendant.)	

CONSENT DECREE

Plaintiff, the U.S. Equal Employment Opportunity Commission (the “Commission” or “EEOC”), commenced this action on September 27, 2019, in the United States District Court for the Northern District of Ohio against Defendant Davis Automotive Group, Inc. t/a BMW Cleveland. The Commission alleged claims arising under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, et seq. (“ADEA”), alleging that Defendant discriminated against Charging Parties Kymberly Saba, Avery Wieder, and Ronald Wesley by subjecting them to unlawful discrimination because of their age, including failing to hire Ms. Saba and discharging Messrs. Wieder and Wesley.

EEOC and Defendant enter into this Consent Decree to resolve this action and all claims alleged in the Complaint.

The Court finds that it has jurisdiction over the subject matter of this action and the parties for the purpose of the action, entry of this Consent Decree, and all proceedings related to the Consent Decree.

The Court, having examined the terms and provisions of the Consent Decree, further finds that it is reasonable and just in accordance with the Federal Rules of Civil Procedure and the ADEA. The entry of this Consent Decree will further be in the best interests of the parties, those for whom the EEOC seeks relief, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

DEFINITIONS

- A. "Defendant" means Davis Automotive Group, Inc. t/a BMW Cleveland, and its owners, officers, and directors.
- B. "Commission" or "EEOC" is the U.S. Equal Employment Opportunity Commission, an agency of the United States Government.
- C. "Charging Parties" means Kymberly Saba, Avery Wieder, and Ronald Wesley.
- D. "Day" or "days" means calendar days.
- E. "Effective Date" means the date this Decree is signed by the Court.
- F. "Expiration Date" means the date twenty-four (24) months from the Effective Date of this Decree.

GENERAL PROVISIONS AND COURT ENFORCEMENT POWERS

- 1. This Decree constitutes full discharge and satisfaction of all claims that were alleged in the Complaint filed in this action by the EEOC.
- 2. EEOC and Defendant shall bear their own attorney's fees and costs incurred in connection with this action.
- 3. This Court shall retain jurisdiction to enforce the terms of this Consent Decree and will have all available powers to enforce this Decree, including, but not limited to, monetary sanctions and injunctive relief.

GEOGRAPHIC SCOPE AND DURATION OF DECREE

4. This Consent Decree shall apply to all facilities owned or operated by Defendant d/b/a Davis Automotive Group, Inc.
5. This Consent Decree shall become effective on the date it is signed by the Court and shall remain in effect until the Expiration Date.

INJUNCTION

6. Defendant, its officers, directors, agents, employees, successors in interest, assigns, and all persons in active concert or participation with it or on its behalf are enjoined and restrained from engaging in any employment practice that unlawfully discriminates against employees on the basis of age.
7. Defendant, its officers, directors, agents, employees, successors in interest, assigns, and all persons acting in concert with it or on its behalf are hereby enjoined and restrained from any form of retaliation against any person because such person has opposed any practice made unlawful under the ADEA, filed a Charge of Discrimination under the ADEA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADEA, or asserted any rights under this Decree.

MONETARY RELIEF

8. Defendant shall pay to Charging Parties monetary relief in the total amount of Three Hundred Ninety Thousand Dollars and Zero Cents (\$390,000.00), representing back pay and liquidated damages. From such monetary relief, EEOC shall have sole discretion to determine what amounts to pay each Charging Party and to designate what portion of the payment represents back pay and liquidated damages. Within ten (10) days from the Effective Date, EEOC shall notify Defendant what amounts it shall pay to each Charging Party and how such payments shall be

designated, and Defendant shall issue such payments to each Charging Party no later than thirty (30) days after such notice. Such payments shall be made to each Charging Party in two separate checks in accordance with the following:

- a. Defendant shall issue one check for the back-pay amount, less applicable and usual federal, state, and local withholdings, and Defendant shall issue an IRS Form W-2 for the back pay. Defendant shall issue a second check for the liquidated damages amount, from which no withholdings shall be made, and Defendant shall issue a Miscellaneous Income Statement IRS Form 1099 for the liquidated damages.
- b. Within ten (10) days of the Effective Date of this Decree, EEOC shall provide Defendant with each Charging Party's current address together with fully executed IRS Forms W-4 and W-9 from each Charging Party.
- c. Defendant shall send the back pay and liquidated damages payments directly to each Charging Party, by certified mail, return receipt requested, using the address listed on the Form W-4 of the Charging Party to whom payment is made.
- d. Defendant shall send photocopies of the checks, related correspondence, and certified mail return receipts to Trial Attorney Sabrina L. Brown at EEOC's Cleveland Field Office at the address in Paragraph 20 below.
- e. On or before the date required by the Internal Revenue Service for the 2021 tax year, Defendant shall issue to each Charging Party the IRS Forms reflecting his or her payments, as referenced in Paragraph 9(a).

EQUAL EMPLOYMENT OPPORTUNITY OFFICER

9. Within ten (10) days of the Effective Date, Defendant shall designate an Equal Employment Opportunity Officer ("EEO Officer"), who shall be an officer or high-level management official of Defendant. Defendant's designated EEO Officer must have the knowledge, capability,

organizational authority, and resources to monitor and ensure Defendant's compliance with the terms of the Consent Decree, and the Officer must have knowledge of the ADEA and other antidiscrimination statutes, lawful methods and techniques for investigating and responding to employee complaints of discrimination and harassment, and human resource management experience or training. The EEO Officer will investigate and respond to complaints, reports, or other notifications of potential discrimination and harassment, including those referenced below, for the duration of the Decree. Defendant shall ensure that its EEO Officer receives all training and assistance necessary to satisfy the duties described in this Decree. If the EEO Officer fails to carry out such duties proficiently, or the EEO Officer is separated from Defendant's employ, Defendant shall designate a new EEO Officer within forty-five (45) days.

10. Within thirty (30) of the Effective Date, Defendant shall provide written notice to EEOC identifying the full name, job title, work experience, education, and training history (including, but not limited to, all equal employment opportunity and human resource education/training) of the EEO Officer designated under this Decree. If a new or additional EEO Officer is designated, Defendant shall advise EEOC of that designation within ten (10) days.

EEO POLICIES AND PROCEDURES

11. Defendant shall ensure that all of its employment policies and practices comply with federal anti-discrimination laws ("EEO Policies and Procedures"), shall maintain an anti-discrimination policy and complaint procedure at all facilities, and shall timely notify all persons working in its facilities of such policies and procedures.

12. Defendant's anti-discrimination policy shall include, at a minimum, the following information or provisions:

a. An explanation and definition of discrimination and retaliation and a statement that discrimination and retaliation are prohibited at Defendant's facilities.

b. Examples of conduct that constitutes prohibited discrimination and retaliation.

c. A statement of Defendant's commitment to equal employment opportunity; establishing and maintaining a work environment free of unlawful discrimination and retaliation; and compliance with federal laws concerning employment discrimination. It also shall include a statement that discrimination and retaliation will not be tolerated and that anyone found in violation of the policy will be subject to disciplinary action, up to and including termination.

13. Defendant's complaint procedure shall be designed to encourage employees to come forward with complaints regarding any complaint, report, or concern about potential discrimination and retaliation. The complaint procedure shall include, at a minimum, the following information or provisions:

a. A statement that employees are encouraged to complain, report, or convey concerns about potential discrimination and retaliation, and that Defendant will ensure that no discriminatory or retaliatory action is taken against them because they communicated with Defendant or its workers about such matters.

b. A statement that complaints may be made orally or in writing to anyone who has a supervisory role in any of Defendant's facilities. This statement must also include notification that at no time will any worker be required to discuss such matters with the person he or she alleges has been or is engaged in discriminatory or retaliatory conduct.

c. A statement that workers also may contact the United States Equal Employment Opportunity Commission at any time concerning employment matters, with complete contact information provided for the EEOC including that EEOC may be reached at www.eeoc.gov, (800) 669-4000, or (800) 669-6820 (TTY). This statement must also include a restatement of

Defendant's policy that no discriminatory or retaliatory conduct will be taken against any person because he or she contacted EEOC.

d. A requirement that all supervisors, managers, directors, shareholders, partners, owners, human resources personnel, and the EEO Officer, have a duty to actively monitor the work environment to ensure that it is free from discrimination or retaliation and to report any potential discrimination or retaliation and that failure to carry out such duties shall be grounds for disciplinary action, up to and including termination.

EEO TRAINING

14. Defendant shall provide to all supervisory, management, and human resources personnel no fewer than two (2) hours of live training designed to eliminate and prevent discrimination and retaliation, with special emphasis on age discrimination; to advise trainees of Defendant's policies prohibiting discrimination and retaliation; and to advise trainees concerning protection from retaliation for reporting concerns about potential discrimination; and related topics. This training shall have been provided no more than sixty (60) days prior to the Effective Date, or be provided within sixty (60) days of the Effective Date and annually thereafter for the duration of this Decree, and within five (5) days of the first day of work for all new supervisors, managers, and human resources personnel. The training shall be provided by a law firm to which EEOC agrees, at Defendant's own expense.

15. Within forty-five (45) days of the Effective Date, and annually thereafter for the duration of this Decree, Defendant shall provide all non-supervisory employees no fewer than one (1) hour of live, interactive training regarding Defendant's obligations under the ADEA; Defendant's policies prohibiting discrimination and retaliation made unlawful by the ADEA; and any related complaint procedures. This training shall emphasize the ADEA's prohibition on age discrimination. All training described in this Paragraph shall be provided by a law firm to which

EEOC agrees, at Defendant's expense. Defendant shall have the option of video-recording the first training session and, thereafter, shall provide subsequent training pursuant to this Decree by requiring attendance of trainees at a viewing of the video-recording.

RECORDKEEPING AND REPORTING REQUIREMENTS

16. On a quarterly basis beginning three (3) months from the Effective Date and continuing for the duration of this Decree, Defendant shall report to EEOC the following information on applicants:

- a. the full name, job title, date of birth, application, resume, list of references, and all other application materials submitted by each person who was hired or employed by Davis Automotive at any time during the three (3) month period preceding the report date; and
- b. the full name, date of birth, application, resume, list of references, and all other application materials submitted by each person who applied for or sought employment with Davis Automotive at any time during the three (3) month period preceding the report date, but who was not hired.
- c. Section 16(b) does not apply to unsolicited applicants.

17. On a quarterly basis beginning three (3) months from the Effective Date and continuing for the duration of this Decree, Defendant shall report to EEOC the following information on separated employees or workers:

- a. the full name, job title, date of birth, and personnel file, including any disciplinary documents, of anyone whose employment with Defendant ended at any time during the three (3) month period preceding the report date; and
- b. a list of all persons identified in Paragraph 17(a) in an MS Excel file containing for each such person her/his full name (by last name, first name, middle name), contact information (mailing address, telephone number, and email address), date of birth, job titles held, dates of hire,

dates of separation, reasons for the separation, and the names of all persons who terminated each person from employment or participated in making such termination.

18. On a quarterly basis beginning three (3) months from the Effective Date and continuing for the duration of this Decree, Defendant shall report to EEOC whether any complaint or report (formal or informal) of age discrimination or retaliation has been made during the three (3) month period preceding each report, and, if so, shall provide EEOC with copies and descriptions of such complaints or reports, a detailed explanation of action taken in response, including any investigative and corrective measures taken, documents reflecting any investigation Defendant conducted, and the identities and complete contact information for persons who initiated such complaints or reports.

a. Regarding each matter described above in Paragraph 18, Defendant shall compile an investigative file that shall contain the following: the name, home address, home telephone number and cell phone number (as applicable), job title, and social security number of each person who initiated the complaint or report and of each potential victim; the date of the complaint or report; the date/s on which the incident/s allegedly occurred; the location/s where the incident/s took place; the specific allegations that were made; the name, home address, home telephone number and cell phone number (as applicable), job title, and social security number of each person allegedly involved in the discrimination or retaliation and of each potential witness; the complete substance of any statements made by each complainant, potential victim, witness, and person allegedly involved in discrimination or retaliation; a detailed description of all action taken to investigate the complaint or report; and a detailed description of Defendant's conclusions regarding the complaint or report. Defendant shall also retain with the

investigative file all other documents created or obtained in relation to a complaint, report, or investigation, including but not limited to, affidavits, witness statements, interview notes, summaries, and electronic communications. Defendant shall retain such records and information for the duration of this Decree.

- b. For the duration of this Decree and for at least one year thereafter, Defendant shall retain all personnel, payroll, and other employment records or documents related to any person who initiated any matter described above in Paragraph 18(a).
- c. For the duration of this Decree and for at least one year thereafter, Defendant shall retain all personnel, payroll, and other employment records or documents of any character related to any person who was allegedly involved in any matter described above in Paragraph 18(a).
- d. Defendant shall produce to EEOC copies of all documents described in Paragraphs 18(b) and (c) within ten (10) days of EEOC's request for such documents.

NOTICE TO BE POSTED

- 19. Within five (5) days of the Effective Date and throughout the duration of the Decree, Defendant shall post a copy of the Notice, attached hereto as Exhibit A, in conspicuous locations where employee notices customarily are posted. The Notice shall be signed by Defendant's Owner Jeff Davis with the date of posting included on the face of the Notice. The Notice shall remain posted until the Expiration Date of the Decree. At all times, the font size of the language appearing in the Notice shall be maintained as represented in Exhibit A. If multiple pages are used for each Notice, they shall not be displayed one page behind another but must be posted so that all pages are in order and simultaneously visible (i.e., in horizontal row or vertical column configuration). In addition, to the extent it has not already done so, Defendant shall post notice of all applicable federal equal employment opportunity laws and all other notices required by law; such postings

may be displayed using the traditional red, white and blue laminated summary of federal workplace laws now available through EEOC or online. If any of the notices becomes defaced, marred or otherwise unreadable, Defendant shall immediately post a readable copy of such notices.

20. Defendant shall certify to the EEOC in writing within ten (10) days after entry of the Consent Decree that the Notice required by Paragraph 19 has been properly posted. Defendant shall permit a representative of EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours with reasonable prior written or electronic notice to Defendant's counsel at the address, or email of Defendant's counsel listed in counsel's signature block below.

SUBMISSION OF REPORTS AND NOTICES

21. All notifications and reports that Defendant must send to EEOC pursuant to this Decree shall be made in writing and shall be verified by oath or under penalty of perjury by an officer, director, or owner of Defendant. They shall be hand-delivered or sent by overnight mail or commercial carrier or First-Class U.S. mail or electronic mail to the following EEOC representative (or her designated successor):

Sabrina L. Brown, Trial Attorney
Equal Employment Opportunity Commission
Cleveland Field Office
1240 East 9th Street, Suite 3001
Cleveland, OH 44199
sabrina.brown@eeoc.gov

22. All notices or other communications from EEOC to Defendant regarding this Decree shall be provided to Defendant's counsel as follows:

Peter Kirsanow, Esq.
Benesch Friedlander Coplan & Aronoff
200 Public Square, Suite 2300
Cleveland, OH 44114
pkirsanow@Beneschlaw.com

DISPUTE RESOLUTION AND COMPLIANCE REVIEW

23. If a court action is initiated seeking compliance with this Decree, each party shall bear its own costs, expenses, and attorney's fees incurred in connection with such action, unless otherwise ordered.

24. Jurisdiction to resolve any dispute arising under this Decree resides in the United States District Court for the Northern District of Ohio, and any action to enforce this Decree shall be brought, if possible, before the judge who enters this Decree.

25. EEOC, its agents, and its employees shall in their discretion have the legal authority to enter any facility owned or operated by Defendant, with reasonable notice of no less than thirty (30) days, to Defendant and its counsel, and conduct an on-site inspection to ensure compliance with the terms of this Decree for the duration of the Decree. Neither EEOC's authority under this Paragraph nor any other provision of this Decree shall be construed to limit or impair EEOC's authority to take action concerning Defendant or to conduct any investigation or inquiry of Defendant, including, but not limited to, investigating charges of discrimination that have been filed or may be filed in the future concerning potential violations of Title VII of the Civil Rights Act of 1964 (Title VII), the Equal Pay Act (EPA), the ADEA, Titles I or V of the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and any other matter falling within EEOC's jurisdiction, any present or future Commissioner's charge, or any present or future directed investigation or inquiry.

MISCELLANEOUS

26. This Decree may be executed by the Parties in counterparts.

27. The terms of this Decree shall be binding upon all present and future parent corporations of Defendant; all present and future subsidiaries of Defendant; all present and future owners, directors, officers, managers, agents, administrators, representatives, successors, assigns of Defendant, and all persons acting in concert with it or on its behalf. Defendant, and any successor(s), shall provide a copy of this Decree and the Complaint to any organization or person who proposes to acquire or merge with Defendant, or any successor of Defendant, prior to the effectiveness of any such acquisition or merger. This Paragraph shall not limit any remedies available in the event of any finding by the Court regarding a violation of this Decree.

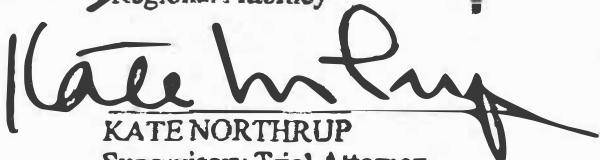
28. This Decree constitutes the entire agreement and commitments of the parties. This agreement shall not be construed to be an admission of liability. Any modifications to this Decree must be mutually agreed upon and memorialized in a separate writing signed by an officer of Defendant and the EEOC and approved by the Court.

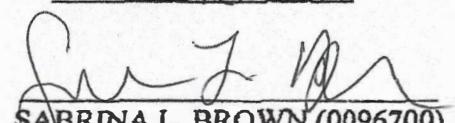
29. If any provision(s) of this Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

IT IS AGREED:

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION


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Regional Attorney


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DAVIS AUTOMOTIVE GROUP, INC.
t/a BMW CLEVELAND



JEFF DAVIS
Owner, Davis Automotive Group, Inc
BMW Cleveland

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN


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Attorneys for Defendant Group, Inc.
t/a BMW Cleveland

Dated: 12/13/21

IT IS SO ORDERED:

Dated: Dec. 13, 2021



JUDGE J. PHILIP CALABRESE
United States District Judge

EXHIBIT A
(See next page.)

NOTICE TO ALL EMPLOYEES

**POSTED PURSUANT TO CONSENT DECREE ISSUED BY THE U.S. DISTRICT
COURT FOR THE NORTHERN DISTRICT OF OHIO**

This Notice is posted pursuant to a federal court order in the matter of *EEOC v. Group, Inc. t/a BMW Cleveland*, Civil Action No. 1:19-cv-02257, resolving a lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government, against Davis Automotive Group, Inc. t/a BMW Cleveland ("Davis Automotive") alleging violations of the Age Discrimination in Employment Act of 1967 ("ADEA"). **This Notice must remain posted for 12 months from the date shown below.**

To resolve the lawsuit, Davis Automotive and the United States EEOC entered into a Consent Decree which provides, among other things, the following relief.

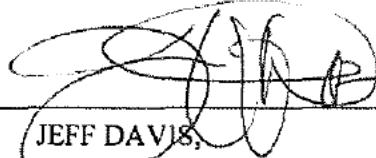
1. Davis Automotive will provide relief to three aggrieved individuals.
2. Davis Automotive shall not discriminate against applicants and employees because of their age, including disparate terms and conditions of employment and discharge because of age. Davis Automotive shall not retaliate against any person because that person engages in any protected activity under the ADEA, including but not limited to complaining about or reporting alleged discrimination or retaliation, participating in any internal investigation of such matters, or opposing any conduct made unlawful by the ADEA.
3. Davis Automotive will continue to provide training regarding prohibiting employment discrimination and retaliation to all current and future managers, supervisors, and employees/workers.
4. Davis Automotive will maintain EEO Policies and Procedures compliant with federal anti-discrimination laws and distribute to all employees, workers, and managers.
5. EEOC will monitor Davis Automotive's compliance with the terms of the Consent Decree.

EEOC enforces federal laws against discrimination in employment on the basis of sex, pregnancy/childbirth/related medical conditions, race, color, religion, national origin, age, disability, or genetic information. If you believe you have been discriminated against, or retaliated against for opposing or reporting discrimination, you have the right under federal law to contact the EEOC and report that discrimination or retaliation. EEOC can be reached at (800) 669-4000, TTY for the hearing impaired at (800) 669-6820, or via e-mail at info@eoc.gov. EEOC is a federal law enforcement agency and charges no fees to receive and investigate complaints.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

12-10-21

DATE


JEFF DAVIS,
Owner, Davis Automotive Group, Inc.